

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Implementation of Sections 716 and 171 of the Communications Act of 1934, as Enacted by the Twenty-first Century Communications and Video Accessibility Act of 2010)	CG Docket No. 10-213
)	
Amending to the Commission’s Rules Implementing Sections 255 and 251 (a)(2) of the Communications Act of 1934, as Enacted by the Telecommunications Act of 1996)	WT Docket No. 96-198
)	
In the Matter of Accessible Mobile Phone Options for People who are Blind, Deaf- Blind, or Have Low Vision)	CG Docket No. 10-145
)	

**COMMENTS OF THE
NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION**

The National Telecommunications Cooperative Association (“NTCA”) responds to the Notice of Proposed Rulemaking issued by the Federal Communications Commission (“Commission”) on March 3, 2011 to seek comment on proposals to implement the advanced communications provisions in Section 104, Title I of the 21st Century Communications and Video Accessibility Act of 2010 (“Accessibility Act”) and its accompanying Regulatory

Flexibility Analysis.¹ The Accessibility Act requires the Commission to adopt rules implementing Sections 716 and 717 within one year of enactment.²

Relevant to these comments, Section 716 requires that providers of advanced communications services and manufacturers of equipment make their services and products accessible to people with disabilities, unless it is not achievable to do so.³ In recognition that the Accessibility Act would impose new obligations and that small businesses “may not have the legal, financial, or technical capability to incorporate accessibility features,”⁴ Congress enacted Section 716(h)(2) which provides that the “Commission may exempt small entities from the requirements of this section.”⁵ NTCA urges the Commission to exercise its authority under 716(h)(2) to establish a categorical exemption for “small telecommunications companies). as that term is defined by the Small Business Administration (“SBA”).⁶ If the Commission chooses to limit its exemption to a smaller class of providers or to limit the exemption to a certain time period, it should adopt well-defined, streamlined, and simplified criteria to enable companies to seek and qualify for a waiver.

NTCA is an industry association comprised of rural telecommunications providers. All of NTCA’s members are rural local exchange carriers and many provide wireless, video, broadband, and long distance services to their communities. All of NTCA’s members are also

¹ *Implementation of Sections 716 and 717 of the Communications Act of 1934, as Enacted by the Twenty-First Century Communications and Video Accessibility Act of 2010*, CG Docket No. 10-213, *Amendments to the Commission’s Rules Implementing Sections 255 and 251(a)(2) of the Communications Act of 1934, as Enacted by the Telecommunications Act of 1996*, WT Docket No. 96-198, *In the Matter of Accessible Mobile Phone Options for People who are Blind, Deaf-Blind, or Have Low Vision*, CG Docket No. 10-145, Notice of Proposed Rulemaking (rel. March 3, 2011). (“NPRM”)

² See 47 U.S.C. § 617(e)(1). The NPRM also seeks comment on Section 718, which is effective three years after the date of enactment of the Accessibility Act and requires manufacturers and service providers to make Internet browsers built into mobile phone accessible to people who are blind or have visual impairments.

³ See 47 U.S.C. § 617 (a)(1), (b)(1).

⁴ See H.R. Rep. No. 111-563, at 26 (2010)

⁵ 47 U.S.C. § 617(h)(2).

⁶ 13 C.F.R. § 121.201, North American Industry Classification System (NAICS) code 517110

“small businesses” as that term is defined by the SBA. Absent an exemption, the Accessibility Act will place a significant financial burden on the shoulders of small telecommunications providers. Small providers lack the size and resources to influence the design or features of equipment. They also lack the purchasing power to enable them to buy equipment in bulk for a reduced price, or to compel sufficient production to ensure that compliant equipment “trickles down” to smaller purchasers within a specific timeframe.

Rural carriers are proud of their history of helping people with disabilities obtain access to telecommunications services and have helped facilitate Telecommunications Relay Services (TRS) for many years. Similarly, rural carriers are supportive of efforts to expand access to IP-based telecommunications and video services to customers with disabilities. However, rural carriers are dependent upon manufacturers and vendors to supply equipment that is capable of meeting the needs of customers with visual and hearing impairments. Rural carriers, along with their affiliates that provide wireless, video, and/or broadband services, are unable to develop such devices on their own. Even if such equipment can be deployed by larger carriers, smaller carriers lacking economies of scale may not be able to obtain and deploy these devices in a similar timeframe. Furthermore, there are examples of smaller carriers being unable to obtain devices desired by consumers at all, due to pricing or other availability issues, specifically in the wireless market.⁷

⁷ See Comments of RTG, OPASTCO and NTCA on the *Rural Cellular Association Petition for Rulemaking Regarding Exclusive Arrangements Between Commercial Wireless Carriers and Handset Manufacturers*, RM No 11497 (filed Feb. 2, 2009); Reply Comments of the Organization for the Promotion and Advancement of Small Telecommunications Companies and the Western Telecommunications Alliance on *Closed Captioning of Video Programming*, CG Docket No. 05-231, *Closed Captioning Requirement for Digital Television Receivers*, ET Docket No 990254 (filed Dec. 9, 2010).

In spite of this record, the NPRM notes that certain groups argue that rural local exchange carriers can ensure compliance with the Accessibility Act through contracts with larger providers and mass market vendors.⁸ As explained above, this is contrary to the experience of small, rural carriers. But even if a contract were obtained, a contract alone will not provide the necessary technical and financial capabilities for compliance. Large companies drive development of applications, devices, software, hardware and customer premises equipment. When there is any new regulatory mandate, the large providers determine the production schedule and their orders are almost always filled first. They have the scale and scope necessary to influence the manufacturers and to drive the production and delivery schedule. It is typically several years before small providers have the ability to place orders and, often, purchase of compliant equipment remains cost prohibitive. Small providers do not have the ability or wherewithal to drive the market or to comply at the same time as large providers. Accordingly, a categorical exemption for small businesses makes sense.

The Accessibility Act recognizes the need to enable individual waivers for companies where compliance is not achievable “with reasonable effort or expense.” Until such time as it becomes clear when equipment will become available, interoperable and affordable, there cannot be a legitimate finding that small provider compliance is achievable with reasonable effort or expense. In fact, any such finding – particularly as to smaller providers – would be pure speculation. It would therefore be wasteful to force hundreds of individual small rural local exchange carriers to suffer the expense and time to file individual waivers, when most, if not all, would in all likelihood qualify. Similarly, requiring individual due diligence and status reports would be unnecessarily burdensome. A categorical exemption is therefore more appropriate.

⁸ NPRM ¶ 63.

This being said, recognizing the legitimate needs and concerns of individuals with disabilities and the fact that equipment is likely to become more affordable and available over time, the Commission may re-examine its exemption after it has existed for a certain period of years, no less than five. An examination of the then-current state of equipment availability, compatibility and affordability will enable the Commission to determine if it is appropriate to sustain the categorical exemption, or further limit its applicability.⁹

At any point in time when small providers are required to file individual waivers, the Commission must limit the burden. An expedited waiver process with a clearly defined set of guidelines the Commission will use to make decisions is appropriate. Small companies who lack the resources to comply with regulation should not be forced to unnecessarily spend money on engineers, consultants and attorneys to demonstrate their inability to comply. A simplified, streamlined and expedited waiver process would help to conserve resources for the provision of service to consumers.

⁹ NTCA does not support a temporary extension that automatically expires without further examination of the industry and the market for compliant equipment – specifically, the affordability, interoperability, and availability of such equipment.

CONCLUSION

For the above stated reasons, the Commission should use the authority granted it by the Accessibility Act to categorically exempt small telecommunications providers from the requirement that providers of advanced communications services make their services and products accessible to people with disabilities.

Respectfully submitted,



By: /s/ Jill Canfield
Jill Canfield
Director, Legal & Industry

4121 Wilson Blvd., 10th Floor
Arlington, VA, 22203
(702) 351-2020

CERTIFICATE OF SERVICE

I, Adrienne L. Rolls, certify that a copy of the foregoing Comments of the National Telecommunications Cooperative Association in following dockets, CG 10-213, WT 96-198 and CG 10-145, FCC 11-137, was served on this 25th day of April 2011 by electronic mail to the following persons:

Julius Genachowski, Chairman
Federal Communications Commission
445 12th Street, SW, Room 8-B201
Washington, D.C. 20554
Julius.Genachowski@fcc.gov

Commissioner Mignon Clyburn
Federal Communications Commission
445 12th Street, SW, Room 8-A302
Washington, D.C. 20554
Mignon.Clyburn@fcc.gov

Commissioner Michael J. Copps
Federal Communications Commission
445 12th Street, SW, Room 8-B115
Washington, D.C. 20554
Michael.Copps@fcc.gov

Commissioner Meredith Attwell Baker
Federal Communications Commission
445 12th Street, SW, Room 8-A204
Washington, D.C. 20554
Meredith.Baker@fcc.gov

Commissioner Robert M. McDowell
Federal Communications Commission
445 12th Street, SW, Room 8-C302
Washington, D.C. 20554
Robert.McDowell@fcc.gov

Best Copy and Printing, Inc.
Federal Communications Commission
445 12th Street, SW, Room CY-B402
Washington, D.C. 20554
fcc@bcpweb.com

David Hu
Broadband Division
Wireless Telecommunications Bureau
David.Hu@fcc.gov

Rosaline Crawford
Consumer and Governmental
Affairs Bureau
Rosaline.Crawford@fcc.gov

/s/ Adrienne L. Rolls
Adrienne L. Rolls